Supreme Court, U.S.
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(1)

CASE NO. 03 540

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2003

LAWRENCE MOORE,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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44 pp

QUESTION PRESENTED FOR REVIEW

1. Can the Internal Revenue Service, created by Congress "to lay and collect taxes on incomes" as per the Constitution, collude (through its IRS Commissioner, Counsel and Appeals Team) with the United States Tax Court to deprive Petitioner of substantive due process at a tax court "trial" by misrepresenting "Alternative Minimum Tax" statutes allow IRS to tax: his personal exemption; double-tax his real and personal "state" property; double-tax state and local income taxes; and tax legitimate "business expenses?"

LIST OF ALL PARTIES

All parties are listed in the caption.

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I. The petition should be granted to review United States Tax Court's affirmation of the Respondent's application of Alternative Minimum Tax - in ways even that tax court admitted Congress never meant it to be applied - to Petitioner, and to review the entire history of that application, which was done without due process or jurisdiction, by a court that overstepped boundaries of accepted trial procedure (to validate arbitrary refusal to allow "discovery," also approved in a *not-for-publication* circuit court Order) and departed from usual courses of judicial proceedings, and also conflicted with applicable decisions by this Court, all of which also require the exercise of this Court's powers of supervision.

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CITATIONS TO OPINIONS BELOW

There were no district or circuit court opinions published below in United States Tax Court No. 7591-01, or in the Sixth Circuit Court of Appeals No. 02-2371.

STATEMENT OF JURISDICTIONAL GROUNDS

Petitioner completed all requirements for a hearing before the U.S. Tax Court, which is not a court of law. The circuit court's jurisdiction to review orders of the U.S. Tax Court is apparently proper under Federal Rule of Appellate Procedure 13, and this Court has jurisdiction to hear this matter under 29 U.S.C. § 1254(1) and Supreme Court Rule 10.

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STATEMENT OF THE CASE

The IRS, Cincinnati office, wrote it needed more information to process Petitioner's 1999 tax return and referred him to an IRS Dallas office which reviewed, and processed it. Petitioner filed: Form 1040; a Schedule A - Itemized Deductions form (listing his "unreimbursed employee expenses" in the Job Expenses and Most Other Miscellaneous Deductions" section but not listing anything in an "Other Miscellaneous Deductions" section); and Form 2106 (detailing all the Schedule A unreimbursed employee expenses). Please see the Appendix ("APX"), *infra*, at p. 14.

But a Chief of an IRS *Philadelphia Examination Branch* wrote on 9/22/00 "proposing an increase to [his income] tax of $4,233" *via* an Alternative Minimum Tax-Individual.[1/]

Petitioner explained his actual Job Expenses incurred working on industrial-grade baggage conveyors at San Francisco Airport's new International Terminal (the most expensive place that he ever lived), which were still significantly less than the "regular federal allowable *per diem*," and pointed out that IRS "limits on itemized deductions" are not applicable to such "job expenses" until annual income exceeds $128,950 ($64,475 if married filing separately)[2/] and showed **Petitioner's total income in 1999 was $54,819**.

After phone calls and letters a Philadelphia "Field Director" mailed a Notice of Deficiency to Petitioner at the wrong address March 30, 2001, but Petitioner timely filed an Amended Petition with U.S. Tax Court, designating Cleveland for Trial (APX 16).

On November 9, 2001 the Tax Court mailed its Notice Setting Case For Trial on February 4, 2002 and Standing Pretrial Order requiring parties to stipulate to facts, exchange exhibits, prepare a Trial Memorandum, identify all witnesses, and serve each other with all pleadings, motions, letters or other documents submitted to it, referring repeatedly to "a basis for settlement" (APX 18).

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[1] An enclosed IRS Form 6251 provided for "Alternate Minimum Tax" on incomes of $150,000 if married filing jointly, $112,500 if single, and $75,000 if married filing separate. Petitioner had been out-of-work and learned that San Francisco job required tradesmen with "industrial" skills, but incurred $39,224 business expenses in order to work there.

[2] IRS Publication 17, Catalogue Number 10311G (2000), p.141.

But Petitioner also received a letter dated **November 9, 2001** from an "**Appeals Office**," stating the "**United States Tax Court docketed the case shown above**," that its "**jurisdiction to settle this case without a trial is limited**," that "**it is important that we meet as soon as possible**," and instructing him to "**gather all documents, receipts, affidavits, etc. not previously submitted so they will be available for our conference**" (APX 22).[3/]

In telephone discussions that "**Appeals Officer**" said Congress changed the AMT statute to lump all employee business expenses together with all "miscellaneous deductions," and he asked to see the **Congressional record** (see APX 23), following that request up with a December 7, 2001 letter stating, "**I will need access to all that information to help me prepare the stipulation of facts required by [the] Trial Judge**" (APX 24).

No such record was provided but the "**Officer**" sent ostensibly "**pertinent portions**" of the Internal Revenue Code, decisions by the "Tax Court" ostensibly showing "The Government prevailed" on constitutional questions related to "Alternative Minimum Tax" in "two court cases," "a stipulation-decision document for your signature," and "a self-addressed return envelope" (APX 25).

After intervening in the case from this very day the tax court docketed it an "**Appeals Team Manager**" then mailed a letter to Petitioner December 18, 2001 and "**referred the case to District Counsel to prepare for trial**," further confusing him (APX 26).

On January 7, 2002 IRS Area Counsel contacted Petitioner for the first time - despite that tax court's Notice Setting Case For Trial on February 4, 2002 and Standing Pretrial Order - writing, "**The Tax Court is an independent federal court and is not connected with the Internal Revenue Service**" and proposed a "conference" for a "Stipulation of Facts." He telephoned to ask for a sample "Stipulation" at that late date, and said he wanted to call that "**Appeals Officer**" as a witness at trial, but Counsel said that the "**Officer**" would not testify, and could ignore a subpoena to testify at trial because the "**Officer**" is "**independent**" just like **independent Counsel** (APX 27, 28).

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[3] The clear intent of the "**docketed letter**," dated the same as a **Notice Setting Case For Trial**, and referring to the contents of the tax court's "**Notice**," was to convince Petitioner it also emanated from that court.

Petitioner reminded Counsel he sent a copy of a letter asking the Appeals Officer for a record "**showing Congress intended to nullify employee expenses**" to Area Counsel, stated his intent to examine her on the instant conversation at trial, and asked her to refer him to "**discovery procedures,**" but she said that he "**had no right to any 'discovery' because it was too late**" (APX 28).

Counsel also told Petitioner he would not be able to raise any of those issues at trial, and he also said he needed information on

> "two IRS officers who were recently featured in an 'NBC Dateline' expose [and] one of them had received $200,000.00 'expenses' for a one-way move from Florida to Wash., D.C., and one had received a $38,000.00 hiring bonus but only stayed with the IRS for three months,"

but she said that was also too late, and "irrelevant" (APX 00-00).

Petitioner then sent the Area Counsel a "proposed Stipulation" to continue the trial date and permit "discovery." Counsel called back, said he could call both her and the Appeals Officer at trial, and said she would "discuss" his stipulation to continue the trial date to allow discovery with "District Counsel," admitted she and Counsel aren't independent but wouldn't comment on an **Appeals Officer** and stated IRS will "compromise" if the Officer made the "changes in the law" statements. Petitioner repeated his need for "names and details" of the two IRS executives featured on NBC, but Counsel argued "**anything Jane Pauley said is irrelevant**"[4/] and he objected to any discussions by Counsel with that "Appeals

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[4] That personal attack on reporter *Pauley*, rather than "information," caused him to review all correspondence and conversations to conclude IRS used its "Appeals Team" to interface with its "Area Counsel" with tax court complicity - later learning tax court also opposed "discovery" - and that a new Notice of Deficiency he received for 2000 was a "hard ball" follow-up to the final "Appeals Officer" letter (APX 00) from an "Appeals Team" (probably originally created to disrupt entrenched IRS "culture" problems disturbing Congress as reported on in USA Today). He learned priorities of a tax court, IRS Counsel, and "Appeals Team" (it probably shares in its AMT "settlements") is to avoid discovery.

Officer" outside a "Deposition" format.

On January 16, 2002 Petitioner moved to continue a February 4, 2002 trial date (because of IRS Counsel's and Appeals Team's collusion to subvert that tax court's November 9, 2001 Pre-Trial Order, and to subvert any "stipulation of facts," any discovery of "documentary and other evidence," and Petitioner's preparation of "adversarial submissions") supporting that Motion with a Brief and his Declaration of Facts showing Respondent's duplicity.

Counsel filed a Trial Memorandum January 16, 2002, arguing IRC § 55 permitted Respondent to treat Petitioner's unreimbursed employee expenses, and "property tax" payments as "alternative minimum taxable income" pursuant to I.R.C. §§ 56(b) and 67(b).

Petitioner's motion for continuance - to allow "discovery" - was argued telephonically January 31, 2002, but was arbitrarily denied in the face of a February 4, 2002 trial date.

Petitioner presented his Trial Memorandum on February 4, 2002, stating he was unable to "stipulate" to any "facts" because he was unable to do "discovery," that any issues were essentially the same as they are before this Court, that he wished to call the "Appeals Officer" and Counsel as witnesses, that intent to call an expert witness had been "**foreclosed by the duplicities of an IRS Appeals Team and IRS counsel**," and by the tax court's rulings that denied him "discovery" despite the Respondent's bad faith.

The Petitioner's Summary of Facts showed "valid inferences of collusion" between the tax court and Respondent are supported by the record, and showed "**No evidence of any Congressional intent to make 'unreimbursed employee expenses' subject to an 'Alternative Minimum Tax' was ever produced by the IRS Appeals Office or IRS counsel.**"

The Petitioner's Brief Synopsis of Legal Authorities showed I.R.C. §§ 55-58 clearly stated AMT may be taken only if income tax is "determined by reference to an amount other than taxable income" - at line 39 of 1040 returns - and "taxable income" was "the only amount referenced to determine his regular tax ...."

He moved on fourteen factual and due process grounds to vacate, revise and stay a Decision based on tax court's Memorandum Findings of Fact and Opinion holding employee expenses, state and local income taxes, and real and personal property tax are "adjustments provided in I.R.C. §§ 56 and 58."

REASONS FOR GRANTING THE WRIT

Tax court's prejudicial "double standards" were obvious from the beginning. Petitioner was told he must file a "Petition" by a cut-off date, or absolutely forfeit that right, but Respondent was granted a two-months-long extension to respond after its default.

Petitioner did not choose alternative kangaroo-court "small tax case procedures" offered in lieu of a trial, but they were imposed on him anyway, the court refused to accept any allegations in the Petition as true, argued with every law-related allegation, denied his unopposed motion to continue a "trial" date (supported with a legal memorandum and affidavit of facts and exhibits validating allegations against Respondent of subverting "discovery" with tax court's complicity, showing the information needed, how it could affect the court's decision and why it had not been obtained). But Petitioner's papers were scrutinized, rather than Respondent's, and his supported and not-disputed allegations were then resolved in favor of Respondent, rather than accept Petitioner's facts.

Although documents Plaintiff produced justified a continuance of the "trial," and showed "discovery" would overcome even that tax court's overt partiality for Respondent, its Order denying that motion was grounded only in refusals to allow the Petitioner "due process," and was a ruling of law equating "business expenses," and "state property" with "taxable income."

Access to proof must be seriously considered when granting or denying a motion that is dispositive to the outcome of a case, where, as here, crucial facts are within the Respondent's control. *White Motor Co. v. United States*, 372 U.S. 253, 83 S.Ct. 696, 9 L.Ed.2d 738 (1963); *Poller v. Columbia Broadcasting Sys.*, 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962). *See In Re Edmond*, 934 F.2d 1304 (4th Cir. 1991) (the defendant may not selectively support a version of the facts while using the law to forestall discovery).

The court patronized unsupported allegations by Respondent's Appeals Team that Congress changed a Sixteenth Amendment tax on income to also include the taxing of "state" real, and personal property (in the form of money used to pay property taxes).

The circuit court misrepresented a Petition to tax court, which disagreed with Respondent's imposition of "Alternative Minimum

Tax" to double-tax money he used to pay "state property tax" and to tax "business expenses" as "income," instead "sought a redetermination of the [IRS notice of] deficiency" (APX 37).

That appeal court also invalidly concluded "AMT represents an effort by Congress to prevent a taxpayer from ... 'paying a shockingly low percentage of his income as tax,'" *citing Kenseth v. Comm'r*, 259 F.3d 881, 882 (7th Cir. 2001), by begging a not analogical, much-higher income "shockingly low" question.[5/]

However, that court's disagreement assumes the historical fact that Congress did pass a law that applies the AMT to "shockingly low" income earned away from home by hard dangerous physical labor in a place with the second-highest living costs in the nation.

The tax court Decision and circuit court Order, whittled down to a meaning understood in light of prevailing law related to the instant Petition to tax court, raises the question whether Congress changed "AMT" statutes to permit them to apply to items exempt from income tax, or whether Respondent misrepresents Congress did that, and those are surely factual issues.

Further, while the circuit court also concluded "determination of whether [Petitioner] is liable for payment of an AMT is a legal question that is not dependent upon any facts," it is a "fact" that Respondent didn't produce any such Congressional record despite Petitioner's often-repeated requests.

Dispute over whether a thing was done (or an event occurred) may be called *historical* facts. and are usually issues for a jury. *Baumgartner v. United States*, 322 U.S. 665, 671, 64 S.Ct. 1240, 1243, 88 L.Ed.2d 1525 (1944).

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[5] A "shockingly low" element here is patronizing orders by politicians in the federal judiciary who pragmatically embrace frauds that patronize unconstitutional "takings" from tradesmen's wages by government and pseudo-government entities (e.g. labor unions), in the face of their own petitions to Congress arguing judges' tax-supported annual income (not including *their* "business expenses"), which is three times higher than Petitioner's 1999 highest-ever income (it was zero in 2001, and 2002), and in the face of facts that his "income" did not even approach 50% of amounts that trigger "limits on itemized deductions," or the "AMT," and his "business expenses" are actual, rather than based on much more liberal "regular federal allowable *per diem*" (see *supra*, p.2).

FIRST, Respondent, its counsel, Appeals Team, and tax court colluded to deprive Petitioner of substantive access to the courts and procedural "due process" by introducing a fraud that I.R.C. § 56(b)(1)(a)(i), which allows an "adjustment" provided for in § 55(b)(2)(A) for "miscellaneous itemized deductions," and equated his **unreimbursed employee business expenses** (not subject to any adjustment) with **miscellaneous deductions** (APX 32-35).

A motive to deny Petitioner "meaningful access" to tax court may be inferred (even without "discovery") but it does not excuse "bad faith" by Respondent, its counsel, appeals team, a tax court judge, and a circuit court to deny him such "access."

The right of substantive access to the federal courts is one of the fundamental rights protected by the Constitution. *Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142, 28 S.Ct. 34, 52 L. Ed. 143 (1907) (right of access to courts is one of the privileges and immunities accorded citizens under Article IV, and the [Fifth and] Fourteenth Amendment[s]).

The First Amendment is also a second Constitutional basis for a right of access to the courts. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L. Ed.2d 642 (1972) (right to petition extends to all departments of Government). *See also NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328, 336, 9 L.Ed.2d 405 (1963).

A third Constitutional basis for the "right of access" to the courts is found in the "due process" clause. *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), *citing Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969). "The hallmark of property ... is an individual entitlement grounded in state law, which can not be removed except for cause." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 1155, 71 L.Ed.2d 265 (1982).

Thus, application of Alternative Minimum Tax to income used to pay real property taxes is an invasion of a right grounded in state and local law not authorized under a Sixteenth Amendment tax only on "income," but the absolute denial of any "procedural due process" right to "discovery" or a "trial" by an overweening Respondent, colluding Appeals Team, IRS counsel, and tax court denied Petitioner meaningful, constitutionally-protected access.

The mere "formal" right of access to the courts does not pass

constitutional muster. This Court has required that access be "adequate, effective, and meaningful." *See Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 113 (1971).

Under our Constitution the "right of access" to federal courts is guaranteed and protected from interference and/or deprivations by Respondent and only compelling interests, not IRS executives' "bonus-incentive" awards, may justify intrusions that "violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1983).

SECOND, tax court equated "Job Expenses" with "income" in a Memorandum Findings of Fact and Opinion to analyze a tax Code, and the Constitution, and beg questions whether Petitioner must file a "Form 6251 Alternative Minimum Tax," and denied discovery to deem as true all facts submitted - without evidence - by Respondent, its Counsel, and Appeals Team, who have a long history of dilatory behavior, willfulness, bad faith and internal IRS culture-prejudice to adverse parties and the news media to end any such case that has merit. *See Ins. Corp. of Ireland v. Compagne Des Bauxites*, 456 U.S. 694, 707, 102 S.Ct. 2099, 2107, 72 L.Ed.2d 492 (1982), and APX 32-35.

An opening attack on Petitioner was so vehement a judge had to recess to compose himself, then presented prepared analogies that begged questions on unreferenced categories of Schedule-A itemized deductions, and invalidly appealed only to an IRS Trial Memorandum on issues that were obviously "mixed questions of law and fact," which Petitioner pointed out, but his rights to substantive and procedural due process were trampled in the rush to stick Sixteenth Amendment income tax onto "state" property.

However, and despite IRS misrepresentations (with tax court's complicity) that I.R.C. §§ 55-58 support applying "AMT" to any such tax-exempt monies, I.R.C. § 55 instead clearly only states:

(a) **Alternative Minimum Tax** is equal to the excess of (1) the "tentative minimum tax" for the taxable year, over (2) the regular [income] tax for the taxable year;

(b)(1)(A)(i)(I) **Tentative Minimum Tax** [here] is equal to 26% of the "taxable excess" as does not exceed $175,000;

(b)(1)(A)(ii) **Taxable Excess** means so much of the

"alternative minimum taxable income" as exceeds the exemption amount;

(b)(2) **Alternative Minimum Taxable Income** means taxable income determined with "adjustments" provided in I.R.C. §§ 56 and 58, and increased by amount of items of "tax preference" described in § 57.

No taxable income of the Petitioner was determined with any "adjustments" provided for in I.R.C. §§ 56 or 58, or "increased" by any amount of tax preference items described in I.R.C. § 57 (**where "job expenses" are not even mentioned**) as provided for in §§ 55(b)(2)(A) and (B).[6]

THIRD, no Congressional Record supports the assertion by Respondent, patronized in the tax court's "Findings Of Fact And Opinion, that an AMT can now be applied to "employee business expenses" exempt from income tax by now lumping the expenses in with separate "miscellaneous deductions" (See APX 32-35).[7]

At Petitioner's appearance (before trial) the enraged "judge" stated, in denying an oral motion for continuance to do discovery (a written motion was tied up in the "anthrax" testing system),

> "Let me tell you why I'm here today. I am here to determine your correct tax liability, and I'm going to examine the reasons the Government says you owe additional money. Matters that took place up to this point do not affect that .... I can't imagine how [what the Congressional Record said] would affect your income tax liability."

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[6] Congress intended AMT to be based on "tax liability" rather than on existing allowable exemptions from income tax, but Respondent's fraud to also apply income tax to business expenses, state and local income, and state property taxes was unwittingly stated by its "Appeals Officer."

[7] IRS Counsel first denied the unrefuted statements of an IRS "Appeals Officer" that Congress "changed the law" (Internal Revenue Code), and offered Petitioner a compromise, but was apparently overruled in favor of instead depending on cooperation of a complicit tax court (APX 27).

Moreover, a caveat at the end of I.R.C. § 55(b)(2) states,

> If a taxpayer is subject to the regular [income] tax, such taxpayer shall be subject to the [alternative minimum tax] imposed by this section (and, if the regular [income] tax is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence).

Petitioner had no "tax preference" items (I.R.C. § 55(B)(2), *supra*") and Respondent figured his tax from 1040 forms, but tax court denied him a right to do discovery by ruling Congressional intent to tax his business expenses "is a matter of law."

Its Memorandum Findings Of Fact and Opinion appealed to "tax preference" items available as business credits for multi-millionaires and corporations - deferring AMT to years when such "preference" items did not provide "tax benefits" - as authority for applying the AMT to employees' business expenses.

Petitioner referred to eighteen discovery issues in his "Trial Memorandum" but was stopped. He protested discovery issues are only two pages long, and "succinct," but that court shouted,

> "Look, I'm not going to argue with you now, Mr. Moore. Listen. You either work with me or I'll just have to handle this case as I see fit."

The Petitioner then stated,

> "I want to know why the Government can apply the alternative minimum tax to my income that went to pay my property taxes and to my income that went to pay my expenses .... [a]nd in the process of discovering that application of the alternative minimum tax to those items, I have encountered other ... problems I had with an appeals team unilaterally interfering without any jurisdiction in the case --"

The court interrupted, "**But that doesn't affect your tax liability,**" wouldn't let him finish, and said "**for me to decide your case I don't need to know that,**" said he was not entitled to "**use Federal Rules of Civil Procedure discovery methods,**" and "**you haven't told me anything that you can get through discovery .... []. What I'm going to do is deny your motion for a continuance, and we're going to hear this case,**" refusing to let him to serve subpoenas on the Appeals Team, or to let him call IRS Counsel on grounds, "**I'm not going to let you do it.**"

The court said the Appeals Team is "independent" and it was "not interested in what the appeals officer may have told [him]," ignored jurisdiction, subversion and complicity issues, but afterwards duplicitously stated that,

> "I'm sympathetic with you, Mr. Moore. This tax was never intended to reach middle-class people. This tax was intended to reach high income people who at one point paid no tax at all because they had large deductions, many of them what we would call artificial, such as depreciation, depletion, those things.
>
> However -- Congress, in its wisdom - and the Internal Revenue Service does not, contrary to popular belief, write the Internal Revenue Code - Congress, in its wisdom, passed the law in its present state and not only that, they have failed to consider the effect that inflation has on peoples' salary, so that now we have more and more people in your situation, and who knows, I could be next, fall into the clutches of this provision.
>
> And it wasn't meant to happen, but its happening nevertheless, even to the extent where people who have large numbers of dependency exemptions are paying alternative minimum tax because they have a lot of children. They're paying the AMT. And it wasn't intended, but its happening."

The court cited Respondent's Trial Memorandum as its absolute

"authority" to reject contrary arguments by stating, "[I]ts a matter of law, not a matter of fact, it's a matter of law."

A court is to apply the law in effect at the time it renders its decision, unless doing so will result in manifest injustice, or there is statutory direction or legislative history to the contrary. *Bradley v. School Bd.*, 416 U.S. 696, 94 S.Ct. 2006, 40 L.Ed.2d 476 (1974) (setting out three factors: (a) the nature and identity of the parties; (b) the nature of their rights; and (c) the nature of an impact of changes in a law upon the rights). If application of a new law may constitute a taking of property this Court applies a "cardinal principal [that it] will first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided." *U.S. v. Security Indus. Bank*, 459 U.S. 70, 78, 103 S.Ct, 407, 412, 74 L.Ed.2d 235 (1982).

The third *Bradley* factor concerns an inquiry on whether any new statutory obligation, if known, would cause a party to alter its conduct, and requires examination of Congressional legislative intent. *See also*, generally, 2 N. Singer, *Statutes and Statutory Construction* (Sands 4th rev.ed. 1986).

FOURTH, the tax court should not have refused to consider the "legislative history" of AMT by insisting it "decided the law" that Respondent can apply a Sixteenth Amendment tax on income to tax property, and create its exculpatory Memorandum Findings of Fact and Opinion while refusing to consider AMT's legislative history, in the face of Respondent's absolute failure to show that it may re-classify "business expenses" as subject to "income tax."

But overt abuses of Petitioner's substantive and "due process" rights, holding "hearings" in Respondent's office, and patronizing of IRS employees (endorsing its fraudulent, nonsensical, baseless and prejudicial claims to be "independent") are confrontationally adverse to Petitioner's interests.

"Discovery" was needed to expose facts related to an "AMT" and relationships between tax court, Respondent, its counsel, and Appeals Team that sent him documents simultaneously to prepare for trial by requesting admissions and production of documents, and serving interrogatories and subpoenas, but was subverted by a tax court blatantly acting in concert with Respondent. Federal agencies with status to "take" citizens' property should be subject to a strict review, not tribalistic mockeries of the "rule of law."

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* IRC § 55 (relevant excerpts) is at pp. 9-10, *supra*.

I.R.C. SECTION 56(b)

(b) Adjustments Applicable To Individuals. In determining the amount of the alternative minimum taxable income of any taxpayer (other than a corporation), the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) Limitation On Deductions --

(A) In General -- No deduction shall be allowed --

(i) for any miscellaneous itemized deduction (as defined in section 67(b)), or

(ii) for any taxes described in paragraph (1), (2), or (3) of section 164(a).

Clause (ii) shall not apply to any amount allowable in computing adjusted gross income.

I.R.C. SECTION 67(b)

(b) Miscellaneous Itemized Deductions. For purposes of this section, the term "miscellaneous itemized deductions" means the itemized deductions other than --

(1) the deduction under § 163 (relating to interest),

(2) the deduction under § 164 (relating to taxes),

(3) the deduction under § 165(a) for casualty or theft losses described in ¶ (2) or (3) of § 165(c) or for losses described in § 165(d).

(4) the deduction under § 170 (relating to charitable, etc., contributions and gifts) and § 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose),

(5) the deduction under § 213 (relating to medical, dental, etc., expenses),

(6) - (12)[8]

[8] Sections (6) - (12) define other irrelevant miscellaneous deductions.

UNITED STATES TAX COURT

LAWRENCE MOORE, Petitioner	)	Dkt. No. 7591-01
	)	AMENDED
v.	)	PETITION
	)	
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

1. Petitioner disagrees with the tax deficiency for the year 1999 as set forth in the NOTICE OF DEFICIENCY dated March 30, 2001. A COPY OF WHICH IS ATTACHED. The notice was issued by the Office of the Internal Revenue Service at Philadelphia, PA.

2. Petitioner's taxpayer identification number is 535-54-2253.

3. Petitioner disputes the amount of $4,233.00 for 1999.

4. Petitioner disagrees with a proposed "adjustment" - from no deficiency to $4,233 - because it was arbitrarily imposed as an "Alternative Minimum Tax" to negate legitimate job expenses incurred while working on the San Francisco Airport expansion in the most costly place he has ever lived. Further, Petitioner's gross income did not even approach 50% of the A.M.Tax minimum.

Dated: JUNE 30, 2001

Lawrence Moore
Petitioner

Department of Treasury
Internal Revenue Service
Philadelphia, PA 19255
March 30, 2001

Contact Person:
R. Stahnten

Tax Year Ended and Deficiency
DECEMBER 31, 1999 $4,233.00

Lawrence Moore

Dear Taxpayer:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is your NOTICE OF DEFICIENCY, as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this determination in court before making any payment, you have until the Last Day To Petition Tax Court (90 days from the date of this letter or 150 days if the letter is addressed to you outside the United States) to file a petition with the Tax Court. You should file the petition with the United States Tax Court, 400 Second Street NW, Washington, D.C. 20217. Attach a copy of this letter to the petition.

* * *

Thank you for your cooperation.

Sincerely yours,

Commissioner

By Deborah Reilly
Field Director, Compliance Svcs.
PHILADELPHIA Service Center

UNITED STATES TAX COURT

LAWRENCE MOORE, Petitioner	)	Dkt. No. 7591-01
v.	)	NOTICE SETTING CASE FOR TRIAL
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	Trial at: Room 2975 1240 E. Ninth St. Cleveland, OH 44199

The parties are hereby notified that the above-entitled case is set for trial at the Trial Session beginning on February 4, 2002.

The calendar for that Session will be called at 10:00 A.M. on that date and both parties are expected to be present at that time and be prepared to try the case. YOUR FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF THE CASE AND ENTRY OF JUDGMENT AGAINST YOU.

Your attention is called to the Court's requirement that, if the case cannot be settled on a mutually satisfactory basis, the parties, before trial, must agree in writing to all facts and all documents about which there should be no disagreement. Therefore, the parties should contact each other promptly and cooperate fully so that the necessary steps can be taken to comply with this requirement. YOUR FAILURE TO COOPERATE MAY ALSO RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST YOU.

If there are a number of cases to be tried, the Court will fix the time of each trial at the end of the calendar call. The Court makes every effort to suit the convenience of the petitioners in fixing trial times, but because of conflicting requests received from petitioners, the final determinations of trial times must rest in the Court's discretion.

Dated: NOV 9, 2001

Charles S. Casazza
Clerk of the Court

UNITED STATES TAX COURT

LAWRENCE MOORE, Petitioner	)	Dkt. No. 7591-01
v.	)	STANDING PRE-TRIAL ORDER
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

To the parties in the Notice of Trial to which this Order is attached.

Policies

You are expected to begin discussions as soon as practicable for purposes of settlement and/or preparation of a stipulation of facts. Valuation cases and reasonable compensation cases are generally susceptible of settlement, and the Court expects the parties to negotiate in good faith with this objective in mind. All minor issues should be settled so the Court can focus on the issue(s) needing a Court decision.

If difficulties are encountered in communicating with another party, or in complying with this Order, you should promptly advise the Court in writing, with copy to each other party, or in a conference call among the parties and the trial judge.

Continuances will be granted only in exceptional circumstances. See Rule 133 (formerly Rule 134), Tax Court Rules of Practice and Procedure. Even joint motions for continuance will not routinely be granted.

If any unexcused failure to comply with this Order adversely affects the timing or conduct of the trial, the Court may impose appropriate sanctions, including dismissal, to prevent prejudice to the other party or imposition on the Court. Such failure may also be considered in relation to disciplinary proceedings involving counsel. See Rule 202(a).

Requirements

To effectuate the foregoing policies and an orderly and efficient disposition of all cases on the trial calendar, it is hereby

ORDERED that all facts shall be stipulated to the maximum extent possible. All documentary and written evidence shall be marked and stipulated in accordance with Rule 91(b), unless the evidence is to be used to impeach the credibility of a witness. Objections may be preserved in the stipulation. If a complete stipulation of facts is not ready for submission at trial, and if the Court determines that this is the result of either party's failure to fully cooperate in the preparation thereof, the Court may order sanctions against the uncooperative party.

Any documents or materials which a party expects to utilize in the event of trial (except for impeachment), but which are not stipulated, shall be identified in writing and exchanged by the parties at least 15 days before the first day of the trial session. The Court may refuse to receive in evidence any document or material not so stipulated or exchanged, unless otherwise agreed by the parties or allowed by the Court for good cause shown. It is further

ORDERED that unless a basis for settlement has been reached, each party shall prepare a Trial Memorandum substantially in the form attached hereto and shall submit it directly to the under-signed and to the opposing party not less than (15) days before the first day of the trial session. It is further

ORDERED that witnesses shall be identified in the Trial Memorandum with a brief summary of the anticipated testimony of such witnesses. Witnesses who are not identified will not be permitted to testify at the trial without leave of the Court upon sufficient showing of cause. Unless otherwise permitted by the Court upon timely request, expert witnesses

shall prepare a written report which shall be submitted directly to the under-signed and served upon each other party at least 30 days before the first day of the trial session. An expert witness' testimony may be excluded for failure to comply with this Order and the provisions of Rule 143(f). It is further

ORDERED that, where a basis for settlement has been reached, stipulated decisions shall be submitted to the Court prior to the

first day of the trial session. Additional time for filing of settlement documents will be granted only where it is clear that settlement has been approved by both parties, and the parties shall be prepared to state for the record the basis for settlement and the reasons for delay in filing documents. The Court will specify the date by which settlement documents will be due and expected (sic) proposed decisions to be submitted by such date. It is further

ORDERED that all parties shall be prepared for trial at any time during the term of the trial session unless a specific date has been previously set by the Court. It is further

ORDERED that every pleading, motion, letter, or other document submitted to the Court by any party subsequent to the date of the notice shall be served upon every other party or counsel for a party and shall contain a certificate of service as specified in Rule 21(b).

Dated: NOV 9, 2001

John F. Dean
Special Trial Judge

Internal Revenue Service, Appeals Office
433 N. Summit Street, Room 254
Toledo, OH 43604
Tel: 419-259-2011

Dear Mr. Moore:

The United States Tax Court docketed the case shown above. Since the period for Appeals jurisdiction to settle this case is limited, it is important that we meet as soon as possible. I will contact you in the near future to schedule a conference.

Meanwhile, please gather any documents, receipts, affidavits, etc. not previously submitted so they will be available for our conference.

At any time you may stop the running of interest on part or all of the proposed deficiency by making an advance payment of tax or posting a cash bond. If you are interested in making a payment, or if you have any questions, please call me at the above phone number.

Dated: NOV 9, 2001

Suzanne Church
Appeals Officer

To: IRS Appeals Office Re: Tax Court Docket No. 7591-01

Dear Ms. Church:
This is to memorialize our telephone conversation on November 28, 2001 as a follow-up to your letter dated November 9, 2001 (signed by Kathy Brenner). We discussed the entire spectrum of expenses I submitted with my Income Tax filings for the tax year ending in 1999, and although neither you nor I had copies of the forms that reflected those expenses I copiously detailed the actual factual bases for those expenses (including the incredibly inflated costs of living expenses I incurred while working on the San Francisco Airport's new International Terminal, which was the only job that I worked that year). You advised me that you had requested those forms, and that you would contact me again if or when you needed. I explained to you that my expenses had been reviewed by the IRS in Dallas prior to approving my refund, that the officer who had reviewed my expenses was originally from San Francisco, and that he approved my refund partly because of his personal experiences (I explained I had to pick and choose jobs because of my age).

I believe that your position - after we had agreed conditionally on the facts - is that the statute allowing deduction of employee expenses has been changed by Congress to lump "employee expenses" together with "miscellaneous expenses" and the legislative change now permits the IRS to impose an "alternative minimum tax" on the now-new "miscellaneous taxes" which would otherwise not have been possible when my expenses were classified as "employee expenses." I explained that because of those IRS "culture" problems reported in the media I would have to examine the Congressional record to see if the statutory change was intended to have that effect. (I am also concerned about the interpretation of the statute because of my own bad experience with the IRS "taxpayer advocate" program which - from experiences in this case - I know is a total sham.)
If I have not stated everything accurately please write me ASAP.

NOV 30, 2001

Sincerely,
Lawrence Moore

To: IRS Appeals Office

Re: Tax Court Docket No. 7591-01

Dear Ms. Church:

This is a follow-up to my letter to you dated November 30, 2001 which memorialized our November 28, 2001 telephone conversation. I am wondering whether access to the statutory changes - which I inferred (correctly or not) allow the IRS to now lump previously allowable "employee expenses" together into another category of "miscellaneous expenses," and to then impose alternative minimum tax - would preclude my decision to go to trial on those issues.

I have no knowledge of the "discovery" procedures available to me in the situation I am in and perhaps you can refer me to any such procedures if my request is inappropriate, but I would like very much to have copies of both the "employee expenses" statute, and the "miscellaneous expenses" statute prior to those changes which have caused these problems, and to those statutory changes which now permit the IRS to impose that "alternative minimum tax" in my situation. I would also like to have all relevant excerpts from the congressional record showing Congress intended to do that.

I will need access to all that information to help me prepare the stipulation of facts required by Trial Judge Dean. I do not want to pursue a futile cause if, as I inferred from our conversation, I am dead in the water. If the requests are more appropriately stated in another form, please refer me to the form(s).

Thank you for your cooperation.

DEC 7, 2001

Sincerely,
Lawrence Moore

C.: Dennis G. Driscoll, IRS Ass. Area Counsel

Internal Revenue Service Small Business/Self-Employed, Area 3

Dear Mr. Moore:

As requested in your December 7, 2001 letter, I am enclosing the Internal Revenue Code sections regarding applicability of Alternative Minimum Tax to your 1999 Federal income tax return. I highlighted pertinent portions of the statute for your convenience. I have also transferred AMT Computation to a Form 6251 so that you can clearly see the preference items for 1999. The two preference items are taxes and miscellaneous itemized deductions. The computation of the AMT lumped preference items together and did not identify them individually. The instructions for the 1999 Form 6251 accompany the computation.

Also enclosed are two court cases. The first case, William O. Johnson, T.C. Memo 1993-530, addresses the issue of whether an employee's unreimbursed business expenses are an adjustment in computing the AMT? The second, Thomas N. Rawlins, T.C. Memo 1995-502, questions whether the AMT imposed by section 55(a) unconstitutionally distinguishes between the expenses of self-employed individuals versus the expenses of employees in violation of the Due Process Clause of the 5th Amendment? The Government prevailed in both of these cases.

In the event that the Tax Court finds you liable for AMT in 1999 as I believe it will, if your case proceeds to trial or should you concede the issues prior to trial I have included 2000 Form 8801, Credit for Prior Year Minimum Tax Individuals and instructions. Someone should make this computation for the year 2000 to see if there is any offsetting credit for the prior year AMT liability. Finally, should you agree to concede the issue of AMT liability for 1999 prior to trial, I have enclosed a stipulation for your signature. If, after reading the legal research material you agree that you are liable, please sign and return two copies of the stipulation document. If you do not agree, sign nothing and the case will proceed to trial.

Dated: DEC 12, 2001 S.M. Church, Appeals Officer

Internal Revenue Service
Appeals Office
433 N. Summit Street, Room 254
Toledo, OH 43604

Date: DEC 18, 2001

Person to Contact:
Suzanne M. Church
Tel. 419-259-2011

Docket Number: 7591-01

Petitioner:
Lawrence Moore

Dear Mr. Moore:

We tried to settle this case and avoid trial. Unfortunately, we did not reach a basis for settlement and have, therefore, referred the case to District Counsel to prepare for trial.

If you have any questions, please call the person whose name and telephone number are shown above.

Sincerely,

Peter W. Van Enwen for

Joseph W. Weiss
Appeals Team Manager

Office of Chief Counsel
Docket No. 7591-01
Small Business/Self-Employed Counsel
Dated JAN 3, 2002

Dear Mr. Moore:
Your tax case is scheduled for trial before the United States Tax Court on February 4, 2002, at 10:00 a.m. in Cleveland, Ohio. The Tax Court is an independent federal court and is not connected with the IRS. I am the attorney assigned to represent the IRS in your case. The Tax Court's Rules are designed to make trials proceed as smoothly as possible. Under Tax Court Rule 91 (copy enclosed), we are required to advise the Court about all facts and documents which we would like the Court to see in order to resolve this dispute. We must agree which facts and documents are not in dispute, and submit them to the court as a "Stipulation of Facts."

Let me suggest a conference for this purpose in my office on January 11, 2002 at 10:00 a.m. In accordance with Branerton Corp. v. Commissioner, 61 T.C. 691 (1974), I am requesting copies of any and all documents that you intend to use as Exhibits in the trial of this matter.

I should also explain the possible consequences of your not appearing for trial. The Court may dismiss your case and enter a decision holding you liable for up to the full amount of the tax (and penalties, if any) as set forth in the notice of deficiency.

If you have any questions, or if the suggested conference date is inconvenient, please write or call me at (216) 522-3380.

Sincerely,

Dennis G. Driscoll
Associate Area Counsel
By: Michelle Lippert, Attorney

Box 140901
Toledo, OH 43614
Ph. (419) 472-8509
January 7, 2002

Michelle M. Lippert
IRS Chief Counsel Office
1375 E. Ninth St., Suite 1200
Cleveland, OH 44114
Ph. (216) 522-3380

Re: Moore v. IRS, No. 7591-01

Dear Madam:

This is to memorialize our telephone conversation today. I called in response to your letter dated Jan 3, 2002, and left a message on your recorder asking if I was entitled to a jury trial in the case, asked you to send me a completed two-party Rule 91 stipulation from another case (with non-generic matter blacked-out, if necessary) and informing you I wished to call Sue Church of the IRS Appeals Office as a witness in the trial currently scheduled for February 4, 2002.

Your return call informed me I could not have a jury trial or a copy of a stipulation from any other case, even if all non-formal matter was deleted and that Ms. Church would not appear at trial because she was an independent party. I told you the IRS system I had gone through thus far was very confusing, especially as to the true "role" of persons who contacted me about a 1999 return, but that I was beginning to sort it out, and I doubted Church is "independent" because a December 18, 2001 letter to me from an "Appeals Team Manager" misrepresenting that a team "tried to settle this case and avoid trial," naming Church as the person to contact, and enclosing a December 12, 2001 letter to me from Church as the IRS's advocate. I said I never spoke to anyone but Church, who gave me only the IRS original demand, and that

after confirming I earned income in 1999 only as an "employee" said, "unfortunately for" me Congress changed the law to lump "employee expenses" with "miscellaneous expenses," and that made my expenses subject to the alternative minimum tax. I then said I needed to see the congressional record on that.

You interrupted me to deny Church told me that, and after I told you I had memorialized that conversation in my November 30, 2001 letter, and would also similarly memorialize our conversation you stated it didn't matter because Church is an independent, private person who would not testify at trial. I asked if the Tax Court had power to issue subpoenas and you repeatedly said it didn't matter because she was "independent" - like you as "independent counsel" - and she would ignore a subpoena. I then stated that I would also question you under oath at Trial on this conversation, and reminded you that I asked Church, in my December 7, 2001 letter (asking for "relevant excerpts from the congressional record showing Congress intended to nullify employee expenses]") to refer me to "discovery procedures available to me," and copied the letter to your office without ever getting a response from either Church, Dennis Driscoll or you. You became exasperated, said you now didn't believe anything I said and stated I had no right to any "discovery" because it is "too late," and said even if Church did give me information about Congress changing the law to negate "employee expenses" she was wrong and it didn't matter. I responded that I would file a motion with the Court to change the trial date and permit me to do discovery.

You then insisted only facts would be included in the stipulation and the only "relevant facts" were related to expenses I had listed as itemized deductions in a 1999 return, and those "facts" are the only "facts" the Court would hear in the trial. I asked you if you had authority to speak for the Court, stated Rule 91 also provided for "disputed facts" to be included in the stipulation and you said testimony on what Church said or did not say was irrelevant and the Court would not allow it and it was not going to be included in the Trial Stipulation. You finally admitted you did not speak for the Tax Court but still insisted you and Church are both "independent."

I then informed you I needed identities of the TWO IRS officers recently featured in a "Dateline NBC" expose, that one of them had received $200,000.00 "expenses" for a one-way move from Florida to Wash., D.C., and one received a $38,000.00 "hiring bonus" but only stayed with the IRS for three months. You insisted the information was irrelevant to my case, like the issue about "employee expenses" and Ms. Church and were not "facts" that could be included in the Trial Stipulation. I asked repeatedly if the Federal Rules of Evidence governed Tax Court proceedings and you finally answered in the affirmative. I then asked you again if the "Tax Court" had power to issue subpoenas, and you finally admitted that it did and that I could serve interrogatories, requests for production, and requests for admission, but stated it is "too late" for that, even though you acknowledged that I asked everyone I had contact with about "discovery" rights for months, and that you, Church, and "independent" counsel Driscoll stone-walled me to make sure I was not prepared for trial. Although you did not admit it you also did not disagree that everyone from the "Advocate Services," "Appeals Office," and "Independent Counsel" are paid by the IRS, and actually work for the IRS.

You then stated: I should have hired a lawyer; the judge would not allow any discovery at this late date; that the Court would not issue a subpoena for Church to appear; and that the only "facts" included in the "stipulation" you would send me to sign would be the expenses I claimed. I told you again that I was now going to file a motion for a continuance of the trial date, and that I now believed everyone who had contacted me from the IRS was intent on fraudulently hiding true vested-interest roles in victimizing me, that neither you, nor Driscoll, nor Church, nor the ostensible Taxpayer Advocate Services are "independent," as you constantly insist, and that your deliberate attempts to hide my right to do discovery in preparation for trial, refusal to respond to my informal requests for documents to support the positions espoused by an ostensible "Independent Appeals Department" officer (Church) are deliberate attempts to hide institutional fraud by a government agency, especially in light of your now-insistence I could not call witnesses, do discovery, and add a "stipulation" you would send me because it was too late, and Judge Dean would not allow that,

or a "continuance" because the Tax Court judges had to "travel."

You refused to respond to a question whether $200,000.00 expenses the IRS paid to one of its officers to make a one-time move from Florida to Washington, D.C. and a $38,000.00 hiring bonus for an IRS officer who quit after only three months - in light of ongoing harassment of me, and misrepresentations in the pre-trial process after I earned $54,000 (the most I ever earned) in the most expensive place I ever worked and lived away from home - was evidence of a "scheme and pattern of behavior" within the Federal Rules of Evidence and insisted neither you, nor Church would testify at trial scheduled for February 4, 2002 on any of the inconsistencies in misinformation you gave me which related to your application of the "alternative minimum tax" to my case.

I repeated that I would memorialize our conversation by letter as soon as our telephone call ended, and you began shouting at me and calling me "a liar" because I accidentally addressed you as "Sue" and you rejected my apology on grounds it was the second time, and I apologized again for calling you "Sue" while reading parts of my letters to Ms. Church, and you stated you originally intended to make me an offer of compromise when you called but that you would not make that offer now because you thought it would be a waste of time and you did not believe anything I said. I assured you that I had not said anything untrue, and everything I said was logical and ethical even though you may not like it, or agree with it, and you abruptly ended our telephone call.

If you believe that anything I stated in this letter is inaccurate please write me as soon as possible, at your convenience.

Sincerely,

Lawrence Moore

C.: Dennis Driscoll, Tax Court Bar No. DD0287

UNITED STATES TAX COURT

LAWRENCE MOORE, Petitioner	)	Dkt. No. 7591-01
	)	T.C. Memo. 2002-196
v.	)	
	)	MEMORANDUM
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	FINDINGS OF FACT AND OPINION

Lawrence Moore, pro se.

Michelle M. Lippert, for respondent.

DEAN, Special Trial Judge: Respondent determined a deficiency in petitioner's Federal income tax of $4,233 for 1999. The only issue is whether petitioner is liable for the alternative minimum tax.

FINDINGS OF FACT

Petitioner resided in Toledo, Ohio, at the time the petition in this case was filed.

Petitioner timely filed his 1999 Federal income tax return. Attached to the return was a Form W-2, Wage and Tax Statement, from "Four-A Electric, Inc." reporting wages to petitioner of $54,819. Petitioner reported the amount of his wages on line 7 of the return. On Schedule A, Itemized Deductions, of his return, petitioner claimed deductions for State and local taxes of $4,999, and charitable contributions of $100. He also claimed on Schedule A miscellaneous itemized deductions for unreimbursed employee expenses of $39,224, after reduction for the 2-percent floor of section 67.[1]

From adjusted gross income of $55,207, petitioner deducted total itemized deductions of $44,323, and a personal exemption of $2,750, to arrive at taxable income of $8,134 on which he computed a tax due of $1,219. As petitioner had total withholding credits of $6,197, he claimed an overpayment of

[1] Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the year in issue.

$4,978. Petitioner did not attach Form 6251, Alternative Minimum Tax-Individuals, to his 1999 income tax return, or report any liability for the alternative minimum tax on line 51 of Form 1040, U.S. Individual Income Tax Return.

The Commissioner sent petitioner a notice of deficiency dated March 30, 2001, stating his determination that petitioner is liable for the alternative minimum tax prescribed by section 55 in the amount of $4,233.

OPINION

Since 1969, the Internal Revenue Code has included minimum tax provisions for both corporate and individual taxpayers. Tax Reform Act of 1969 (TRA 1969), Pub.L. 91-172, 83 Stat. 487. congress enacted the minimum tax to prevent corporate and individual taxpayers from aggregating deductions to the point where they pay either no tax or a "shockingly low" tax. First Chicago Corp. v. Commissioner, 842 F.2d 180, 181 (7th Cir. 1988), affg. 88 T.C. 663 (1987). Section 301 of the TRA 1969, 83 Stat. 580, imposed a minimum tax on certain tax preference items to be added on to a taxpayer's other tax liability. The provisions remained in effect, with only minor changes, as the only minimum tax formulation in the Internal Revenue Code until 1978. See Revenue Act of 1978, Pub.L. 95-600, sec 421(a), 92 Stat. 2871; First Chicago Corp. v. Commissioner, supra; Day v. Commissioner, 108 T.C. 11 (1997).

The Revenue Act of 1978 was supposed to repeal the add-on minimum tax for individuals and replace it with a new alternative minimum tax (AMT) beginning in 1979. Other sources indicate, however, that the two provisions co-existed in the Internal Revenue Code until the add-on minimum tax was finally repealed by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub.L. 97-248, sec. 201(a), 96 Stat. 411, and supplanted by an amended alternative minimum tax. E.I. du Pont de Nemours & Co. v. Commissioner, 102 T.C. 1, 18 n.10, aff'd. 41 F.3d 130 (3d Cir. 1994), and aff'd. sub nom. Conoco, Inc. v. Commissioner, 42 F.3d 972 (5th Cir. 1995); United States v. Deckelbaum, 784 F.Supp 1206, 1208 (D.Md. 1992). This TEFRA AMT provision remained in effect from 1982 until its amendment by the Tax Reform Act of 1986, Pub.L. 99-514, sec. 701, 100 Stat. 2320, which expanded the AMT for individuals.

See S.Rept. 99-313 (1986), 1986-3 C.B. (Vol. 3) 515, 521.

The post-1986 AMT rules, sections 55-59, were amended to establish a floor for tax liability, so that a taxpayer will pay some tax regardless of the tax breaks otherwise available to him under the regular income tax rules. See S.Rept. 99-313, supra, 1986-3 C.B. (Vol. 3) at 518. The AMT rules accomplish this goal by eliminating favorable treatment given to certain items for purposes of the regular income tax. Secs. 55(b)(2), 56, 57, 58.

The AMT is paid only if, and to the extent that, it exceeds the taxpayer's regular income tax. Sec. 55(a). The starting point in computing AMT liability is determining the "alternative minimum taxable income" (AMTI). AMTI is computed in the same manner as regular taxable income except that the adjustments provided in sections 56 and 58 are taken into account for AMTI, and the tax preference items set forth in section 57 are not permitted to reduce AMTI. Sec. 55(b)(2). To determine the taxable amount of AMTI, the AMTI is reduced by an exemption amount, which in this case is $33,750, subject to a gradual phase-out of the exemption amount as AMTI exceeds $112,500. Sec. 55(d)(1), (3). The AMT rate is than applied to AMTI, as reduced the exemption amount. Sec. 55(b). For the taxable year at issue in this case, the applicable AMT rate is 26 percent. The figure resulting from the application of the AMT rate to the AMTI is the tentative minimum tax (TMT).

Next, the regular income tax is compared to TMT. If TMT is greater than the regular income tax, the TMT is the final tax liability for the taxable year. Sec. 55(a).

In petitioner's case,[2] the regular income tax is $1,219, the amount petitioner reported on lines 40 and 49 of his Form 1040. Pursuant to section 55(a), the AMT is the difference between the tentative minimum tax and the regular tax. The TMT is 26 % of the excess of petitioner's AMTI over his exemption amount of $33,750. See sec. 55(b)(1)(A)(i)(I). As petitioner had no items of tax preference in 1997, AMTI here means petitioner's taxable income determined with the adjustments provided in section 56.

[2] There are no factual issues in dispute that are relevant to ascertaining the tax liability of petitioner in this case and the Court therefore finds sec. 7491(a) to be inapplicable.

Petitioner reads the flush language following section 55(b)(2)(B) to mean that no adjustments provided by section 56 may be made to his taxable income to determine AMTI. The flush language states that if a taxpayer is subject to the regular tax, he is subject to the AMT, and if the regular tax is determined by reference to an amount other than taxable income, such amount shall be treated as taxable income for AMT purposes. Petitioner argues that the flush language means that the AMT tax rate can only be applied to his regular taxable income. Petitioner misunderstands the operation of the AMT. It is a tax not on taxable income but on "alternative minimum taxable income" in excess of the exemption amount. Sec. 55(b)(1); Ellison v. Commissioner, T.C. Memo 1995-427 (AMTI of individuals includes taxable income plus State and local taxes, personal exemptions, and miscellaneous itemized deductions). And to determine AMTI the statute requires the taxpayer to make adjustments to taxable income to compute alternative minimum taxable income. Sec. 55(b)(2)(A) and (B); Holly v. Commissioner, T.C. Memo. 1998-55 (AMTI included taxable income plus personal exemption, miscellaneous deductions, and State taxes); Ellison v. Commissioner, supra.

Petitioner's taxable income for 1999 was $8,134.05, the amount reported on line 39 of Form 1040. As relevant herein, the adjustments required by section 55(b)(2) as provided in section 56(b) are threefold. First, section 56(b)(1)(A)(i) provides that no deduction shall be allowed for "any miscellaneous itemized deduction (as defined in section 67(b))". Second, section 56(b)(1)(A)(ii) states that no itemized deduction for State and local taxes shall be allowed in computing alternative minimum taxable income. Third, section 56(b)(1)(E) states that no personal exemptions shall be allowed in computing AMTI.

The effect of section 56(b)(1)(A)(i), (ii), and (b)(1)(E) is to increase petitioner's taxable income amount by: (1) $39,224, the amount claimed on petitioner's Schedule A as miscellaneous deductions for unreimbursed employee expenses; (2) $4,999, the amount claimed on petitioner's Schedule A for State and local taxes; and (3) $2,750, the amount claimed on petitioner's Form 1040 for a personal exemption.

After taking into account the foregoing three adjustments,

petitioner's AMTI for 1999 is $54,719. Petitioner's AMTI exceeds the applicable exemption amount of $33,750 by $20,969. See sec. 55(d)(1)(A)(i). Petitioner's tentative minimum tax is therefore 26 percent of that excess, or $5,452. See sec. 55(b)(1)(A)(i)(I). Because petitioner's TMT exceeds petitioner's regular tax of $1,219, petitioner is liable for the alternative minimum tax in the amount of such excess, $5,452 less $1,219, or $4,233.

Accordingly, we sustain respondent's determination that there is a deficiency in petitioner's income tax for the year 1999.

The court has considered all other arguments advanced by petitioner, and to the extent not discussed above, has found those arguments to be irrelevant or without merit.

To reflect the foregoing,

Decision will be entered for respondent.

Filed August 7, 2002.

UNITED STATES TAX COURT

LAWRENCE MOORE, Petitioner	)	Dkt. No. 7591-01
v.	)	DECISION
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

Pursuant to the determination of the Court, as set forth in T.C. Memo. 2002-196, filed August 7, 2002, it is

ORDERED and DECIDED: That there is a deficiency due from petitioner for Federal income tax for the taxable year 1999 of $4,233.

Entered: AUG 15 2002

John F. Dean
Special Trial Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAWRENCE MOORE, Petitioner-Appellant,	)	Appeal No. 02-2371
v.	)	USTC No. 7591-01
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	)	ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
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Before: KEITH, MOORE, and GIBBONS, Circuit Judges.

Lawrence Moore, proceeding pro se, appeals a decision of the tax court finding him liable for a 1999 federal income tax deficiency as determined by the Commissioner of Internal Revenue ("Commissioner"). This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P. 34(a).

On March 30, 2001, the Commissioner issued a notice of deficiency to Moore. The notice stated that the Commissioner had "determined that there is a deficiency (increase) in [Moore's] income tax" in the amount of $4,233 for the tax year ending December 31, 1999. The documents that were attached to the notice indicated that the deficiency amount represented an alternative minimum tax ("AMT") and demonstrated how the AMT was calculated.

In response to the Commissioner's notice of deficiency, Moore filed a petition in the United States Tax Court, pursuant to 26 U.S.C. §§ 6213 and 7442, in which he sought a redetermination of the deficiency as calculated by the

Commissioner. The tax court determined that there was a deficiency in the amount of Moore's income tax for the year 1999, determined that Moore was liable for the AMT as calculated by the Commissioner, and entered a decision in favor of the Commissioner. Moore's subsequent motion to vacate the decision was denied. Moore has filed a timely appeal. He requests oral argument in his reply brief. In addition, Moore has submitted a "statement of the issues on appeal."

We review de novo the tax court's legal conclusions. *Zack v. Comm'r*, 291 F.3d 407, 412 (6th Cir. 2002). "In particular, this court reviews the Tax Court's interpretation of Internal Revenue Code provisions and related Treasury regulations *de novo*." *Churchill Downs, Inc. v. Comm'r*, 307 F.3d 423, 425 (6th Cir. 2002).

The AMT represents an effort by Congress to prevent a taxpayer from either avoiding tax liability altogether or "paying a shockingly low percentage of his income tax." *Kenseth v. Comm'r*, 259 F.3d 881, 882 (7th Cir. 2001) (quoting *First Chicago Corp. v. Comm'r*, 842 F.2d 180, 181 (7th Cir. 1988)). Taxpayers who are subject to regular tax are also subject to the AMT. 26 U.S.C. § 55(b)(2). However, a taxpayer is only liable for payment of an AMT to the extent that the AMT exceeds the taxpayer's regular tax. 26 U.S.C. § 55(a). The AMT establishes a method for taxing income which the regular tax does not reach. Consequently, deductions and credits that are excluded in the computation of a regular tax are included in the computation of the AMT. 26 U.S.C. § 55(b)(2).

Upon review, we conclude that the tax court properly concluded that Moore is liable for the AMT as calculated by the Commissioner. Moore's taxable income for 1999 was $8,134.05 and his regular tax was $1,219. However, Moore's tentative minimum tax ("TMT") for 1999 was $5,452.08. Because Moore's TMT exceeded his regular tax by $4,233, rounded to the nearest dollar, Moore is liable for the AMT in that amount. Moore's arguments on appeal do not compel a different result.

We further conclude that Moore's arguments relating to discovery and recusal of the tax court judge are without merit. First, the determination of whether Moore is liable for payment of an AMT is a legal question that is not dependent upon any

facts. Therefore, discovery of unspecified facts allegedly in possession of the Commissioner is simply unnecessary in this case. Second, Moore offers no facts or evidence to establish that the impartiality of the tax court judge might reasonably be questioned. Moore's subjective beliefs and the tax court's adverse rulings in his case are insufficient to demonstrate that the tax court judge was biased and prejudiced against him. *See Traficant v. Comm'r*, 884 F.2d 258, 267 (6th Cir. 1989); *Khan v. Yusufji (In re Khan)*, 751 F.2d 162, 164 (6th Cir. 1984).

Accordingly, the request for oral argument is denied and the decision of the tax court is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT.

Filed: JUN 6, 2003

Leonard Green
Clerk